



Sen. Heather Steans

Filed: 3/24/2009

09600SB1617sam001

LRB096 10987 DRJ 24383 a

1 AMENDMENT TO SENATE BILL 1617

2 AMENDMENT NO. _____. Amend Senate Bill 1617 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Ambulatory Surgical Treatment Center Act is
5 amended by changing Section 6 as follows:

6 (210 ILCS 5/6) (from Ch. 111 1/2, par. 157-8.6)

7 Sec. 6. Upon receipt of an application for a license, the
8 Director may deny the application for any of the following
9 reasons:

10 (1) Conviction of the applicant, or if the applicant is
11 a firm, partnership or association, of any of its members,
12 or if a corporation, of any of its officers or directors,
13 or of the person designated to manage or supervise the
14 facility, of a felony, or of 2 or more misdemeanors
15 involving moral turpitude, as shown by a certified copy of
16 the record of the court of conviction, or, in the case of

1 the conviction of a misdemeanor by a court not of record,
2 as shown by other evidence, if the Director determines,
3 after investigation, that such person has not been
4 sufficiently rehabilitated to warrant the public trust; or
5 other satisfactory evidence that the moral character of the
6 applicant, or manager, or supervisor of the facility is not
7 reputable;

8 (2) The licensure status or record of the applicant, or
9 if the applicant is a firm, partnership or association, of
10 any of its members, or if a corporation, of any of its
11 officers or directors, or of the person designated to
12 manage or supervise the facility, from any other state
13 where the applicant has done business in a similar capacity
14 indicates that granting a license to the applicant would be
15 detrimental to the interests of the public; or

16 (3) The applicant has insufficient financial or other
17 resources to operate and conduct the facility in accordance
18 with the requirements of this Act and the minimum
19 standards, rules and regulations promulgated thereunder.

20 The Director shall only issue a license if he finds that
21 the applicant facility complies with this Act and the rules,
22 regulations and standards promulgated pursuant thereto and:

23 (a) is under the medical supervision of one or more
24 physicians;

25 (b) permits a surgical procedure to be performed only
26 by a physician, podiatrist or dentist who at the time is

1 privileged to have his patients admitted by himself or an
2 associated physician and is himself privileged to perform
3 surgical procedures in at least one Illinois hospital; and

4 (c) maintains adequate medical records for each
5 patient.

6 A license, unless sooner suspended or revoked, shall be
7 renewable annually upon approval by the Department and payment
8 of a license fee of \$300. Each license shall be issued only for
9 the premises and persons named in the application and shall not
10 be transferable or assignable. The licenses shall be posted in
11 a conspicuous place on the licensed premises. A placard or
12 registry of all physicians on staff in the facility shall be
13 centrally located and available for inspection to any
14 interested person. The Department may, either before or after
15 the issuance of a license, request the cooperation of the State
16 Fire Marshal. The report and recommendations of this agency
17 shall be in writing and shall state with particularity its
18 findings with respect to compliance or noncompliance with such
19 minimum standards, rules and regulations.

20 On and after the effective date of this amendatory Act of
21 the 96th General Assembly, no license shall be granted or
22 renewed unless the applicant submits a notarized statement
23 signed by the Chief Executive Officer of the organization
24 certifying that the applicant will not refuse service to any
25 patient because the services the patient seeks may be
26 reimbursed under the program of Medical Assistance under

1 Article V of the Illinois Public Aid Code or Medicare. In
2 addition, no license shall be granted or renewed if the
3 Department determines that the applicant has not complied with
4 a prior notarized statement submitted pursuant to this
5 paragraph.

6 The Director may issue a provisional license to any
7 ambulatory surgical treatment center which does not
8 substantially comply with the provisions of this Act and the
9 standards, rules and regulations promulgated by virtue thereof
10 provided that he finds that such ambulatory surgical treatment
11 center will undertake changes and corrections which upon
12 completion will render the ambulatory surgical treatment
13 center in substantial compliance with the provisions of this
14 Act, and the standards, rules and regulations adopted
15 hereunder, and provided that the health and safety of the
16 patients of the ambulatory surgical treatment center will be
17 protected during the period for which such provisional license
18 is issued. The Director shall advise the licensee of the
19 conditions under which such provisional license is issued,
20 including the manner in which the facilities fail to comply
21 with the provisions of the Act, standards, rules and
22 regulations, and the time within which the changes and
23 corrections necessary for such ambulatory surgical treatment
24 center to substantially comply with this Act, and the
25 standards, rules and regulations of the Department relating
26 thereto shall be completed.

1 A person or facility not licensed under this Act or the
2 Hospital Licensing Act shall not hold itself out to the public
3 as a "surgery center" or as a "center for surgery".

4 (Source: P.A. 88-490.)

5 Section 10. The Health Care Worker Self-Referral Act is
6 amended by changing Sections 15 and 20 and by adding Section 21
7 as follows:

8 (225 ILCS 47/15)

9 Sec. 15. Definitions. In this Act:

10 (a) "Board" means the Health Facilities Planning Board.

11 (a-5) "Compensation relationship" means any arrangement
12 involving remuneration, direct or indirect, between a health
13 care worker (or a member of the health care worker's immediate
14 family) and an entity. For purposes of this Act, "compensation
15 relationship" does not include any arrangement satisfying the
16 requirements for exception under Section 1877 of the federal
17 Social Security Act (42 U.S.C. 1395nn).

18 (b) "Entity" means any individual, partnership, firm,
19 corporation, or other business that provides health services
20 but does not include an individual who is a health care worker
21 who provides professional services to an individual.

22 (b-5) "Financial relationship" means a direct or indirect
23 investment interest, or a direct or indirect compensation
24 relationship.

1 (c) "Group practice" means a group of 2 or more health care
2 workers legally organized as a partnership, professional
3 corporation, not-for-profit corporation, faculty practice plan
4 or a similar association in which:

5 (1) each health care worker who is a member or employee
6 or an independent contractor of the group provides
7 substantially the full range of services that the health
8 care worker routinely provides, including consultation,
9 diagnosis, or treatment, through the use of office space,
10 facilities, equipment, or personnel of the group;

11 (2) the services of the health care workers are
12 provided through the group, and payments received for
13 health services are treated as receipts of the group; and

14 (3) the overhead expenses and the income from the
15 practice are distributed by methods previously determined
16 by the group.

17 (d) "Health care worker" means any individual licensed
18 under the laws of this State to provide health services,
19 including but not limited to: dentists licensed under the
20 Illinois Dental Practice Act; dental hygienists licensed under
21 the Illinois Dental Practice Act; nurses and advanced practice
22 nurses licensed under the Nurse Practice Act; occupational
23 therapists licensed under the Illinois Occupational Therapy
24 Practice Act; optometrists licensed under the Illinois
25 Optometric Practice Act of 1987; pharmacists licensed under the
26 Pharmacy Practice Act; physical therapists licensed under the

1 Illinois Physical Therapy Act; physicians licensed under the
2 Medical Practice Act of 1987; physician assistants licensed
3 under the Physician Assistant Practice Act of 1987; podiatrists
4 licensed under the Podiatric Medical Practice Act of 1987;
5 clinical psychologists licensed under the Clinical
6 Psychologist Licensing Act; clinical social workers licensed
7 under the Clinical Social Work and Social Work Practice Act;
8 speech-language pathologists and audiologists licensed under
9 the Illinois Speech-Language Pathology and Audiology Practice
10 Act; or hearing instrument dispensers licensed under the
11 Hearing Instrument Consumer Protection Act, or any of their
12 successor Acts.

13 (e) "Health services" means health care procedures and
14 services provided by or through a health care worker.

15 (f) "Immediate family member" means a health care worker's
16 spouse, child, child's spouse, or a parent.

17 (g) "Investment interest" means an equity or debt security
18 issued by an entity, including, without limitation, shares of
19 stock in a corporation, units or other interests in a
20 partnership, bonds, debentures, notes, or other equity
21 interests or debt instruments except that investment interest
22 for purposes of Section 20 does not include interest in a
23 hospital licensed under the laws of the State of Illinois.

24 (h) "Investor" means an individual or entity directly or
25 indirectly owning a legal or beneficial ownership or investment
26 interest, (such as through an immediate family member, trust,

1 or another entity related to the investor).

2 (i) "Office practice" includes the facility or facilities
3 at which a health care worker, on an ongoing basis, provides or
4 supervises the provision of professional health services to
5 individuals.

6 (j) "Referral" means any referral of a patient for health
7 services, including, without limitation:

8 (1) The forwarding of a patient by one health care
9 worker to another health care worker or to an entity
10 outside the health care worker's office practice or group
11 practice that provides health services.

12 (2) The request or establishment by a health care
13 worker of a plan of care outside the health care worker's
14 office practice or group practice that includes the
15 provision of any health services.

16 (Source: P.A. 95-639, eff. 10-5-07; 95-689, eff. 10-29-07;
17 95-876, eff. 8-21-08.)

18 (225 ILCS 47/20)

19 Sec. 20. Prohibited referrals and claims for payment.

20 (a) A health care worker shall not refer a patient for
21 health services to an entity outside the health care worker's
22 office or group practice with ~~in~~ which the health care worker
23 has a financial relationship ~~is an investor~~, unless the health
24 care worker directly provides health services within the entity
25 and will be personally involved with the provision of care to

1 the referred patient and the entity meets the standards set
2 forth in Section 21.

3 (b) Pursuant to Board determination that the following
4 exception is applicable, a health care worker may invest in and
5 refer to an entity, whether or not the health care worker
6 provides direct services within said entity, if there is a
7 demonstrated need in the community for the entity and
8 alternative financing is not available. For purposes of this
9 subsection (b), "demonstrated need" in the community for the
10 entity may exist if (1) there is no facility of reasonable
11 quality that provides medically appropriate service, (2) use of
12 existing facilities is onerous or creates too great a hardship
13 for patients, (3) the entity is formed to own or lease medical
14 equipment which replaces obsolete or otherwise inadequate
15 equipment in or under the control of a hospital located in a
16 federally designated health manpower shortage area, or (4) such
17 other standards as established, by rule, by the Board.
18 "Community" shall be defined as a metropolitan area for a city,
19 and a county for a rural area. In addition, the following
20 provisions must be met to be exempt under this Section:

21 (1) Individuals who are not in a position to refer
22 patients to an entity are given a bona fide opportunity to
23 also invest in the entity on the same terms as those
24 offered a referring health care worker; and

25 (2) No health care worker who invests shall be required
26 or encouraged to make referrals to the entity or otherwise

1 generate business as a condition of becoming or remaining
2 an investor; and

3 (3) The entity shall market or furnish its services to
4 referring health care worker investors and other investors
5 on equal terms; and

6 (4) The entity shall not loan funds or guarantee any
7 loans for health care workers who are in a position to
8 refer to an entity; and

9 (5) The income on the health care worker's investment
10 shall be tied to the health care worker's equity in the
11 facility rather than to the volume of referrals made; and

12 (6) Any investment contract between the entity and the
13 health care worker shall not include any covenant or
14 non-competition clause that prevents a health care worker
15 from investing in other entities; and

16 (7) When making a referral, a health care worker must
17 disclose his investment interest in an entity to the
18 patient being referred to such entity. If alternative
19 facilities are reasonably available, the health care
20 worker must provide the patient with a list of alternative
21 facilities. The health care worker shall inform the patient
22 that they have the option to use an alternative facility
23 other than one in which the health care worker has an
24 investment interest and the patient will not be treated
25 differently by the health care worker if the patient
26 chooses to use another entity. This shall be applicable to

1 all health care worker investors, including those who
2 provide direct care or services for their patients in
3 entities outside their office practices; and

4 (8) If a third party payor requests information with
5 regard to a health care worker's investment interest, the
6 same shall be disclosed; and

7 (9) The entity shall establish an internal utilization
8 review program to ensure that investing health care workers
9 provided appropriate or necessary utilization; and

10 (10) If a health care worker's financial interest in an
11 entity is incompatible with a referred patient's interest,
12 the health care worker shall make alternative arrangements
13 for the patient's care.

14 The Board shall make such a determination for a health care
15 worker within 90 days of a completed written request. Failure
16 to make such a determination within the 90 day time frame shall
17 mean that no alternative is practical based upon the facts set
18 forth in the completed written request.

19 (c) It shall not be a violation of this Act for a health
20 care worker to refer a patient for health services to a
21 publicly traded entity in which he or she has an investment
22 interest provided that:

23 (1) the entity is listed for trading on the New York
24 Stock Exchange or on the American Stock Exchange, or is a
25 national market system security traded under an automated
26 inter-dealer quotation system operated by the National

1 Association of Securities Dealers; and

2 (2) the entity had, at the end of the corporation's
3 most recent fiscal year, total net assets of at least
4 \$30,000,000 related to the furnishing of health services;
5 and

6 (3) any investment interest obtained after the
7 effective date of this Act is traded on the exchanges
8 listed in paragraph 1 of subsection (c) of this Section
9 after the entity became a publicly traded corporation; and

10 (4) the entity markets or furnishes its services to
11 referring health care worker investors and other health
12 care workers on equal terms; and

13 (5) all stock held in such publicly traded companies,
14 including stock held in the predecessor privately held
15 company, shall be of one class without preferential
16 treatment as to status or remuneration; and

17 (6) the entity does not loan funds or guarantee any
18 loans for health care workers who are in a position to be
19 referred to an entity; and

20 (7) the income on the health care worker's investment
21 is tied to the health care worker's equity in the entity
22 rather than to the volume of referrals made; and

23 (8) the investment interest does not exceed 1/2 of 1%
24 of the entity's total equity.

25 (d) Any hospital licensed under the Hospital Licensing Act
26 shall not discriminate against or otherwise penalize a health

1 care worker for compliance with this Act.

2 (e) Any health care worker or other entity shall not enter
3 into an arrangement or scheme seeking to make referrals to
4 another health care worker or entity based upon the condition
5 that the health care worker or entity will make referrals with
6 an intent to evade the prohibitions of this Act by inducing
7 patient referrals which would be prohibited by this Section if
8 the health care worker or entity made the referral directly.

9 (f) If compliance with the need and alternative investor
10 criteria is not practical, the health care worker shall
11 identify to the patient reasonably available alternative
12 facilities. The Board shall, by rule, designate when compliance
13 is "not practical".

14 (g) Health care workers may request from the Board that it
15 render an advisory opinion that a referral to an existing or
16 proposed entity under specified circumstances does or does not
17 violate the provisions of this Act. The Board's opinion shall
18 be presumptively correct. Failure to render such an advisory
19 opinion within 90 days of a completed written request pursuant
20 to this Section shall create a rebuttable presumption that a
21 referral described in the completed written request is not or
22 will not be a violation of this Act.

23 (h) Notwithstanding any provision of this Act to the
24 contrary, a health care worker may refer a patient, who is a
25 member of a health maintenance organization "HMO" licensed in
26 this State, for health services to an entity, outside the

1 health care worker's office or group practice, in which the
2 health care worker is an investor, provided that any such
3 referral is made pursuant to a contract with the HMO.
4 Furthermore, notwithstanding any provision of this Act to the
5 contrary, a health care worker may refer an enrollee of a
6 "managed care community network", as defined in subsection (b)
7 of Section 5-11 of the Illinois Public Aid Code, for health
8 services to an entity, outside the health care worker's office
9 or group practice, in which the health care worker is an
10 investor, provided that any such referral is made pursuant to a
11 contract with the managed care community network.

12 (Source: P.A. 92-370, eff. 8-15-01.)

13 (225 ILCS 47/21 new)

14 Sec. 21. Exception to prohibition of referrals;
15 nondiscrimination.

16 (a) Notwithstanding any other provision of this Act to the
17 contrary, a health care worker may refer a patient for health
18 services to an entity outside the health care worker's office
19 or group practice with which the health care worker has a
20 financial relationship, provided that:

21 (1) the entity has adopted a policy providing that
22 services will be available to patients who are recipients
23 under the Illinois Public Aid Code and to patients who have
24 no health insurance on the same basis as other patients;
25 and

1 (2) in determining whether to refer an individual
2 patient to an entity with which the health care provider
3 has a financial relationship, the health care worker shall
4 not discriminate based upon the patient's ability to pay
5 for services or upon the source of funding; in determining
6 whether this condition is met, the Board shall consider
7 whether the percentage of patients referred to the entity
8 by the health care worker who are recipients of assistance
9 under the Illinois Public Aid Code, or who have no health
10 insurance, is comparable to the percentage of such patients
11 served by the health care worker's office or group
12 practice; and

13 (3) the entity submits a report to the Board on an
14 annual basis regarding its adoption of a policy as provided
15 in paragraph (1), any modifications to that policy, and the
16 percentage of patients served by the entity who were
17 recipients of assistance under the Illinois Public Aid Code
18 and the percentage who had no health insurance.

19 (b) This Section does not apply to a licensed hospital or
20 to an entity owned in whole or in part by a licensed hospital.

21 Section 15. The Radiation Protection Act of 1990 is amended
22 by changing Section 5 as follows:

23 (420 ILCS 40/5) (from Ch. 111 1/2, par. 210-5)

24 (Section scheduled to be repealed on January 1, 2011)

1 Sec. 5. Limitations on application of radiation to human
2 beings and requirements for radiation installation operators
3 providing mammography services.

4 (a) No person shall intentionally administer radiation to a
5 human being unless such person is licensed to practice a
6 treatment of human ailments by virtue of the Illinois Medical,
7 Dental or Podiatric Medical Practice Acts, or, as physician
8 assistant, advanced practice nurse, technician, nurse, or
9 other assistant, is acting under the supervision, prescription
10 or direction of such licensed person. However, no such
11 physician assistant, advanced practice nurse, technician,
12 nurse, or other assistant acting under the supervision of a
13 person licensed under the Medical Practice Act of 1987, shall
14 administer radiation to human beings unless accredited by the
15 Agency, except that persons enrolled in a course of education
16 approved by the Agency may apply ionizing radiation to human
17 beings as required by their course of study when under the
18 direct supervision of a person licensed under the Medical
19 Practice Act of 1987. No person authorized by this Section to
20 apply ionizing radiation shall apply such radiation except to
21 those parts of the human body specified in the Act under which
22 such person or his supervisor is licensed. No person may
23 operate a radiation installation where ionizing radiation is
24 administered to human beings unless all persons who administer
25 ionizing radiation in that radiation installation are
26 licensed, accredited, or exempted in accordance with this

1 Section. Nothing in this Section shall be deemed to relieve a
2 person from complying with the provisions of Section 10.

3 (a-5) On or after the effective date of this amendatory Act
4 of the 96th General Assembly, no person may administer
5 radiation to a human being in a Class C or Class D radiation
6 installation, as defined in Section 25 of this Act, other than
7 a hospital, unless the radiation installation submits a
8 notarized statement signed by the Chief Executive Officer of
9 the radiation installation certifying that the radiation
10 installation will not refuse service to any patient because the
11 services the patient seeks may be reimbursed under the program
12 of Medical Assistance under Article V of the Illinois Public
13 Aid Code or Medicare. In addition, radiation may not be
14 administered to a human being in a Class C or Class D
15 installation other than a hospital if the Agency determines
16 that the radiation installation has not complied with a prior
17 notarized statement submitted pursuant to this subsection.

18 (b) In addition, no person shall provide mammography
19 services unless all of the following requirements are met:

20 (1) the mammography procedures are performed using a
21 radiation machine that is specifically designed for
22 mammography;

23 (2) the mammography procedures are performed using a
24 radiation machine that is used solely for performing
25 mammography procedures;

26 (3) the mammography procedures are performed using

1 equipment that has been subjected to a quality assurance
2 program that satisfies quality assurance requirements
3 which the Agency shall establish by rule;

4 (4) beginning one year after the effective date of this
5 amendatory Act of 1991, if the mammography procedure is
6 performed by a radiologic technologist, that technologist,
7 in addition to being accredited by the Agency to perform
8 radiography, has satisfied training requirements specific
9 to mammography, which the Agency shall establish by rule.

10 (c) Every operator of a radiation installation at which
11 mammography services are provided shall ensure and have
12 confirmed by each mammography patient that the patient is
13 provided with a pamphlet which is orally reviewed with the
14 patient and which contains the following:

15 (1) how to perform breast self-examination;

16 (2) that early detection of breast cancer is maximized
17 through a combined approach, using monthly breast
18 self-examination, a thorough physical examination
19 performed by a physician, and mammography performed at
20 recommended intervals;

21 (3) that mammography is the most accurate method for
22 making an early detection of breast cancer, however, no
23 diagnostic tool is 100% effective;

24 (4) that if the patient is self-referred and does not
25 have a primary care physician, or if the patient is
26 unfamiliar with the breast examination procedures, that

1 the patient has received information regarding public
2 health services where she can obtain a breast examination
3 and instructions.

4 (Source: P.A. 93-149, eff. 7-10-03; 94-104, eff. 7-1-05.)

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.".